

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court’s order whether the case is or not approved for reporting)
(Chapter VIII, Rule 32 (2) (b))

Description of the Case.

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Reserved

Criminal Appeal No 851 of 2001
2949 of 1987 (Old No.)

Mohan Singh & another		Appellants
	Versus	
State		...Respondent

Approved for reporting.

Not approved for reporting.

Date of Decision 1 December, 2004.

Initial of Judge.

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Reserved

Criminal Appeal No. 851 of 2001
2949 OF 1987 Old No.)

1. Mohan Singh S/o Sri Dharm Singh
 2. Ratan Singh S/o Sri Godhan Singh (died)
 3. Har Singh S/o Sri Inder Singh
 4. Lachham Singh S/o Sri Haran Singh
All R/o village Kholyn Tala Solt
P.S. Bhatraujkhan
District Almora
- Appellants

Versus

State

....Respondent

Sri M.S. Pal and Sri P.S. Rawat learned counsel for the appellants
Sri Nanda Arya, learned A.G.A. for the State

**Coram : Hon'ble M.M. Ghildiyal, J.
 Hon'ble B.C. Kandpal, J.**

(Delivered by Hon'ble B.C. Kandpal, J.)

This criminal appeal arises out against the judgment and order dated 16.10.1987 passed by Sessions Judge, Almora in S.T. No. 36 of 1987 State Vs. Mohan Singh & others convicting the accused/appellants under Section 302/34, 201/34 and 394 I.P.C. and sentencing them to life imprisonment under Section 302 as read with Section 34 I.P.C., 5 years rigorous imprisonment under Section 201/34 I.P.C. and further two years rigorous imprisonment under Section 394 I.P.C. However, all the sentences were directed to run concurrently.

During the trial one of the accused Ratan Singh died, therefore, the case against him abated but the trial continued against the other appellants, namely, Mohan Singh, Har Singh and Lachham Singh who have filed this appeal.

Brief facts of the prosecution case as emerged out from the record are that Bhupal Sing @ Joga Singh a resident of

Village Sain Bagaria, P.S. Bhatraunjkhan, District Almora went to the village Dabra in connection with the *Mela* held there on the occasion of Shiv Ratri on 26.02.1987. He was accompanied by his wife and two children. He had taken with him an amount of Rs. 3,000/- when he went for *mela*, out of which he had to pay 2,000/- for the price of bullocks purchased by him earlier and the remaining amount of Rs. 1,000/- for the purchase of Goat.

In the Mela he met Gusain Singh (P.W.1) who is the R/o village Totam. He remained there with his wife and children till 4:30 P.M. and thereafter he sent back his wife and children telling them that he would be coming back on the next day. Thereafter Bhupal Singh and Gusain Singh started moving towards Mela and found that the gambling was going on in front of the tea-stall of one Bhuwan Singh. In this gambling, the accused, Mohan Singh, Har Singh, Ratan Singh and Lachham Singh were also participating besides a number of other persons. Bhupal Singh also joined in the gambling and he won an amount of Rs. 200/- from the accused-Mohan Singh and another sum of Rs. 600/- from the accused Lachham Singh. When it started becoming dark, Bhupal Singh stopped gambling and told that he had to go to village Bhaisora along with his companion Gusain Singh. The accused followed him and asked Bhupal Singh to accompany them to the house of one Indra Singh for the purpose of gambling, but Bhupal Singh refused for this. They again started towards the place known as Khuti Aam, which is at a distance of about 2- 2^{1/2} furlongs and the accused also followed them. They again pressed Bhupal Singh to accompany them for gambling or to return the amount which he had won from them. Bhupal Singh refused for

Gambling and also for returning the money. Thereupon, the accused Mohan Singh lifted Bhupal Singh and threw him on the ground with force. Gusain Singh made an attempt to save Bhupal Singh but he was also threatened by the accused. Therefore, he ran away from that place and hid himself in a field of wheat crop. He had heard the sound raised by Bhupal Singh who was also asking to the accused not to kill him and after some time the sound stopped. The accused Mohan Singh said that now he is dead and also asked his companions to see, if Gusain Singh was hiding himself somewhere nearby. On this Gusain Singh ran away from the place of the occurrence.

On the third day, the mother of Bhupal Singh –Smt. Chana Devi and Soor Singh came to the house of Gusain Singh and enquired about Bhupal Singh. Gusain Singh told the entire story about the incident to them. They went to Khuti Aam in search of the dead body of Bhupal Singh but the body was not found. Thereafter Smt. Chana Devi mother of the deceased Bhupal Singh lodged the written report (Ex. Ka. 2) at P.S. Bhatraujkhan on 02.3.1987.

On 03.03.1987 the statement of Gusain Singh was recorded and Sri S.J. Kamrool Haq accompanied by him went to the place of occurrence and also where the gambling took place. Both the places were inspected and the site plan Ex. Ka. 6 was prepared. The accused Mohan Singh was called and he was arrested after interrogation. On the pointing out of the accused- Mohan Singh the dead body of Bhupal Singh was recovered in the presence of the witnesses. The Fard Ex. Ka. 3 of recovered articles was prepared by the Investigating Officer. On the same day the accused Ratan Singh was arrested by Sri B.P.Singh- S.I. The police also arrested another accused Har

Singh. On 03.3.1987, the site plan of the place where the dead body was found was also prepared which is Ex. Ka. 13.

The post mortem on the body of the deceased was conducted by Dr. S.N. Srivastave (P.W.3), Medical Officer, Civil Hospital, Ranikhet, on 04.3.1987 at about 4:00p.m. The doctor found following ante mortem injuries on the person:-

- “1. Sharp cut wound on left side of face extending to lower jaw left. Mandible cut sharp, edge of bone seen, blood clots in an area 8 cm X 4 cm. Maggots were present.*
- 2. Sharp cut wound on right side of forehead extending through temple and just above right ear 6 cm X 4 cm. Blood clots present. Sharp edge of temple bone and parietal bone seen. Maggots were present.*
- 3. Contusion and abrasion on the left side of chest, 4 cm below nipple, area 5 cm X 4cm.*
- 4. Contusion on the left side of chest 2cm medial to injury no. 3 area 4X 2cm.*
- 5. Contusion and abrasion, just below right knee, area 4cm X 3 cm.*
- 6. Contusion on the left wrist ventral surface, area 3cm X 2cm.”*

The stomach was found containing semi solid undigested food, but no smell of alcohol was present. There was 5 cm X 2 cm laceration in the gall bladder. The doctor also opined that the spleen was liquefied. The kidney was also ruptured. It was also found that the brain had liquefied and there were maggots. The body was decomposed, but the nails were intact. There were maggots present on face and skull.

The Investigating Officer after completing the investigation submitted the chargesheet against the

Accused/appellant before³ the court of C.J.M., Almora on 04.4.1987.

After submission of the chargesheet the appellants were committed to the court of Sessions and the learned Sessions Judge framed the charges against the accused under Sections 302 read with 34, 201 read with 34 and 394 I.P.C.

The accused/appellants denied of the charges leveled against them and claimed the trial.

The prosecution in order to support his case produced Gusain Singh – P.W.1, Bhawan Singh – P.W.2, Dr. S.N. Srivastava – P.W.3, Vishan Giri – P.W.4, Chana Devi @ Champa Devi –P.W. 5 Soor Singh –P.W.-6, Nain Ram -P.W. 7 Jiwan Singh P.W. 8 and S.I. Kamrool Haq P.W.9.

After the evidence of the prosecution was over, the statements of the accused were recorded under Section 313 Cr.P.C. The appellants did not adduce any evidence in their defence.

Learned trial court, after having perused the entire evidence on record and hearing the learned counsel for the parties, convicted the accused/appellants under Section 302/34, 201/34 and 394 I.P.C. and sentenced them to life imprisonment under section 302 as read with section 34 I.P.C., 5 years rigorous imprisonment u/s 201/34 I.P.C. and further two years rigorous imprisonment u/s 394 I.P.C. However, all the sentences were directed to run concurrently.

Feeling aggrieved by the aforesaid impugned judgement and order the accused/appellants preferred appeal before the Hon'ble Allahabad High Court, which has been transferred to this Court for disposal after creation of Uttaranchal State.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the defence first of all argued that the First Information Report in the present case is highly belated. It has been submitted that the incident is alleged to have taken place on 26.02.1987 while the First Information Report was lodged by Smt. Chana Devi (P.W.5) on 02.03.1987 at 8:30A.M. Our attention has been invited towards the deposition of Chana Devi (P.W.5) in order to establish that Smt. Chana Devi had already received the information with regard to the incident by the evening of 28.02.1987. Thereafter, the First Information Report upto 02.03.1987 could not be lodged for the reasons best known to the informant. It has also been submitted that the reason for delay have not been properly explained which creates doubt about the prosecution case.

In case, if we closely assess the evidence, then we find that the argument advanced by the learned counsel for the defence is devoid of any merit. As per the deposition of Smt. Chana Devi (P.W.5), her son Bhupal Singh (deceased) had gone to village Dabra in Mela on the occasion of Shiv Ratri and thereafter he did not return. This witness in a very natural way has deposed that on 26.02.1987 in the evening her daughter-in-law and grandsons came back from the Mela and they informed that Bhupal Singh told them that he will not come to this house on the same day as he had to go to other villages in connection with some work. She has also stated in her cross-examination that her son had an amount of Rs. 3,000/- in his possession when he went to Mela. This witness has further deposed that when her son Bhupal Singh did not come back to his house then she started making search of his son and when she came to

Know this fact that her son was in the company of Gusain Singh (P.W.1) belonging to the village Totam then she came to the house of Gusain Singh (P.W.1) who told her that in the Mela deceased Bhupal Singh played gamble with the appellants Mohan Singh, Lachham Singh, Har Singh and Ratan Singh and he won some money in that gamble. Thereafter accuse/appellant Mohan Singh, Har Singh and Lachham Singh started compelling him for gambling or to return the money which he had won from them but Bhupal Singh replied that he did not want to continue gambling as he had to go to another village. Gusain Singh (P.W.1) disclosed as to why and in what manner the incident of murder took place to Smt. Chana Devi (P.W.5). Thereafter they went to the house of the accused/appellant Mohan Singh, but he could not be traced out at his house. They also continued the search of Bhupal Singh (Deceased) but he could not be traced out. She also went to the place of occurrence but she did not get the dead body there. Hence, she went to the P.s. Bhatroujkan for lodging the report before the Patwari.

Bipin Giri (P.W.4) is the person who scribed the First Information Report. He is the owner of the tea stall at Bhatroujkan. He has stated that on 02.03.1987 in the morning Smt. Chana Devi (P.W.5) came to her and got the report written by him.

Nothing has come out in the deposition of either Smt. Chana Devi (P.W.5) or Bipin Giri (P.W.4) which shows that their evidence is not trustworthy.

We do not find any ground which may cast any doubt with regard to the authenticity of the First Information Report. The version given in the First Information Report is simple and

Quite natural. We do not find any whisper, which may suggest that the First Information Report is a result of after thought. To our mind, the First Information Report cannot be said to Have been lodged with an undue delay. We do not find any improper explanation of the delay in lodging the first Information Report.

Another important aspect of the matter is the motive which the prosecution has alleged with the accused persons at the time of commission of crime.

Gusain Singh (P.W.1) is an eyewitness and he has also deposed in his statement about the motive. He has stated that he had gone to the village Dabra in the Mela and deceased Bhupal Singh met him in the village who was also accompanied by his wife and two children and at about 4:30 p.m. Bhuapl Singh (deceased) asked his wife and children to go back to the village as he would be going to Bhaisora and would not come back in the night. This witness has further deposed when his wife and children left, they went to the shop of Bhawan Singh (P.W.2) and in front of his shop the gambling was going on. The accused/appellants were participating in that gambling. He has further deposed that Bhuapl Singh (deceased) also started participating in the gambling and won an amount of Rs. 200/- from the accused/appellant Mohan Singh and a sum of Rs. 600/- from the accused/appellant Lachham Singh, After it Started becoming dark, Bhupal Singh (deceased) told that he would stop gambling, as he had to go to Bhaisore, On this, the accused/appellant compelled him to continuer for gambling but he refused. When this witness in the company of the deceased proceeded ahead only few paces the accused/appellants followed them and again asked to accompany to the house of

One Inder Singh in order to gamble but Bhupal Singh refused. Thereafter this witness and Bhupal Singh started towards Khuti Aam and the accused appellant also followed them. On reaching there, accused/appellants again started compelling Bhupal Singh to take part in gamble or to return the amount which he had won from them but again Bhupal Singh refused. On this refusal the appellant-Mahan Singh threw him on the ground and when Gusain Singh (P.W.1) made an attempt to save him, he was also threatened. Thereafter Gusain Singh (P.W.1) ran away from the place of the occurrence in order to save his life and hid himself in the field of wheat.

The statement of Gusain Singh (P.W.1) is in respect of two separate incidents, one for gambling and quarrelling between the deceased Bhupal Singh and the accused/appellants and another incident in which Bhupal Singh was murdered by the accused/appellants. The first part of his testimony is fully supported by the deposition of Bhawan Singh (P.W.2) who has stated that on the occasion of Shiv Ratri mela gambling was going on in front of his tea stall in which all the appellants were participating and the deceased-Bhupal Singh also took part in that gambling. This witness has also deposed that there was some quarrel between the accused/appellants and the deceased Bhupal Singh who won the money in the gambling. This witness has further deposed that after some time Bhupal Singh accompanied by Gusain Singh went to Khuti Aam and the accused followed them.

There is absolutely nothing in the testimony of Bhawan Singh (P.W.2) which shows that he has any enmity against the appellants. He is neither an interested witness nor inimical with the appellants in any manner. Hence, there is no reason to

Disbelieve the testimony of this witness that the gambling was going on in front of his shop in which the deceased Bhupal Singh and all the appellants were participating. They quarreled with each other regarding the amount won by the deceased Bhupal Singh. To that extent the testimony of Gusain Singh (P.W.1) is also corroborated and there is no reason to disbelieve this part of the story of the prosecution. Therefore, we come to the conclusion that the motive was also available to the appellants for committing the crime of murder of the deceased Bhupal Singh.

It is also important to mention here that when the dead body of the deceased Bhupal Singh was recovered, the money which he was carrying with him amounting to Rs. 3,000/- was missing and the circumstances of the present case clearly shows that this money was certainly taken by the accused/appellants and none else from the possession of the deceased. This again shows the motive available with the accused/appellants at the time of the commission of crime.

Coming to the evidence adduced by the prosecution in order to connect the circumstances for making the chain complete, the evidence with regard to the last seen of the deceased in the company of the appellants is an essential link. The deposition of Gusain Singh (P.W.1) is quite clear and it has also been deposed by us earlier that all the appellants were seen lastly in the company of the deceased. Bhawan Singh (P.W.2) has also stated in his deposition that the gambling was going on in front of his shop and the accused/appellants had played gamble with the deceased and there was some quarrel between them. Thereafter, the accused/appellants chased the deceased who went towards Khuti Aam.

The next important circumstance against the appellant is that of the direct evidence of Gusain Singh (P.W.1) which is on the record. This witness is an eyewitness and has explained as to, in what manner the actual incident had taken place.

As we have already observed that the incident has taken place in two parts and Gusain Singh (P.W.1) is an eyewitness of the actual occurrence which took place in the second part. Gusain Singh (P.W.1) has clearly stated in his deposition that it was the appellants who murdered him on 26.02.1987 at about 8:00 p.m.

The testimony of Gusain Singh (P.W.1) regarding actual occurrence in which Bhupal Singh was murdered has been challenged on a number of grounds. It has been pointed out that the death of Bhupal Singh took place at about 8:00p.m at Khuti Aam which is at a distance of only 2-21/2 furlong from the shop of Bhuwan Singh (P.W.2) so it hardly takes 10 minutes to reach over there from that shop.

It is also submitted that according to the statement of Gusain Singh (P.W.1) when it started becoming dark Bhupal Singh stopped taking part in gambling and told the accused/appellants that he has to go to village Bhaisora. So in case, if it must have become dark at 6:00p.m. and Bhupal Singh stopped gambling at that time then he would have started towards Khuti Aam immediately and he might have reached over there at 6:15 p.m. Therefore, the death might have taken place by that time but as per the statement of Gusain Singh (P.W.1) the occurrence took place at about 8:00 p.m. which appears to be doubtful.

We do not find any force in this argument. In case, if the statement of Bhawan Singh (P.W.2) is taken into account then

It shows that little after gambling and quarrel between the appellants and the deceased, both Gusain Singh and Bhupal Singh came to this shop and remained over there for about 1 hour. Bhawan Singh (P.W.2) has further deposed that the appellant took some tea etc. at that shop and then they went away. So obviously after gambling was stopped, the appellants and the deceased remained at the shop of Bhawan Singh (P.W.2) for not less than 1 hour and it explained the contradiction pointed out by the learned the appellants that the incident ought to have taken place at about 6:15 p.m. This infirmity, if any, there on the record, in no way discredit the testimony of Bhawan Singh (P.W.2).

It is also contended by the appellant that Gusain Singh (P.W.1) reached the village of Surendra Singh at about mid night, although according to his statement the distance from Khutki Aam to that village is only one kilometer, and it is not explained as to how he took 4 hours to reach the village of Surendra Singh, In this connection it would suffice to mention here that according to the statement of Gusain Singh (P.W.1) he had been threatened by the appellants and therefore, he must have taken precaution in going to the house of Surendra Singh. Hence, there is nothing unreliable in his statement when he says that he reached the house of Surendra Singh at about mid night. It is not an infirmity in the statement of this witness.

Learned counsel for the appellants further submitted that there was no reason shown by the witness Gusain Singh (P.W.1) as to why he did not go to his own village which is also at a small distance.

The record shows that the village of of Surendra Singh is nearer then the village of Gusain Singh (P.W.1) Moreover,

Gusain Singh (P.W.1) had to purchase some cloth in the next morning and from there, this witness thought it advisable to stay at the house of Surendra Singh. To our mind, there is no infirmity to discredit the testimony of this witness.

Learned counsel for the appellants has tried to point out that Gusain Singh (P.W.1) did not participate in the gamble because he had no money with him but on the next morning Gusain Singh (P.W.1) purchased some clothes worth Rs. 200/- and paid a sum of Rs. 180/- in cash. Therefore, his presence in the company of the deceased appears to be doubtful.

We are of the view that this factor does not in any way discredit the testimony of Gusain Singh (P.W. 1) as a person may have money with him for a particular purpose and he may not like to waste the money in gambling. The conduct of this witness is quite natural and there is nothing improbable in the statement on this point.

Another ground on which the testimony of Gusain Singh (P.W.1) has been challenged by the learned counsel for the appellant is that he did not disclose the actual occurrence/happening resulting the death of Bhupal Singh for about 2 days and the explanation for non-disclosure by the prosecution appears to be unbelievable as such non-disclosure was a serious infirmity which destroy the credibility of the evidence of the witnesses.

We do not find any force in this argument. It is true that a person must disclose the names of the appellants at the earliest. However, if some explanation is offered which appears to be reasonable then this fact alone that there was no disclosure with regard to the actual occurrence for a day or two would not destroy the credibility of the eyewitness. In the

Instant case. The explanation is that the witness was under fear. Hence the name of the appellants could not be disclosed by him. There was a direct threat to the witness that he would be dealt with in the same way Bhupal Singh and been then naturally a persons would be under fear and would not like to disclose the names of the assailants.

Gusain Singh (P.W.1) if would have kept mum when he was asked about his son by Smt. Chana Devi (P.W.5) then a serious suspicion would have been cast against him. In the instant case, Gusain Singh (P.W.1) disclosed the names of the real assailants when Smt. Chana Devi (P.W.5) came to her in order to enquire about her son. It is nowhere pointed out that this witness had immediate protection of the police authorities or there was any immediate opportunity for disclosure the names of assailants and thus the explanation offered by this witness appears to be quite reasonable. This witness is an independent witness and the suggestion put by the defence in his cross-examination does not place any credence. Gusain Singh (P.W.1) is in no way related to the deceased and has also no motive to falsely implicate the appellants for the murder of Bhupal Singh, Hence, his testimony cannot be disbelieved in any manner.

Learned counsel for the appellants invited our attention towards the post mortem report of the deceased Bhupal Singh which reveals that there were two incised wounds on the person of the deceased. It has been submitted that the prosecution has not come forward to satisfactorily explain about these incised wounds and not non-disclosure of the incised wounds on the person of the deceased by the prosecution, by way of any cogent and reliable evidence certainly goes to show that none of

The witnesses had an opportunity to see the actual incident. Our attention has also been invited towards the statement of the doctor who has stated that the incised wounds could have been caused by some sharp edged weapon which includes Knife and chura and the eyewitnesses produced by the prosecution has not stated anywhere that any sharp edged weapon was used during the commission of crime.

Again we have to assess the evidence of Gusain Singh (P.W.1) who is the eyewitness of the occurrence and it reveals that Gusain Singh (P.W.1) has stated in his deposition that the appellant Mohan Singh threw the deceased Bhupal Singh on the ground and when this witness tried to intervene in the matter then the appellants threatened him with dire consequences. This witness has stated that he ran away from the place of the occurrence and hid himself in the nearby wheat field and from there he heard the shrieks and cries of Bhupal Singh who was requesting the appellants not to kill him. Therefore, the manner in which the incident has taken place and the witness has deposed in his testimony before the court, it is quite probable that this witness could not see as to, in what manner and with what weapon the murder took place. But only on this count the testimony of this eyewitness cannot be disbelieved.

It is evident from the record that it was the dark hours at the time of the occurrence and Gusain Singh (P.W.1) hid himself in a nearby wheat field. Hence, he did not have any occasion to clearly watch the manner of the incident. Therefore, this possibility could not be ruled out that this witness could not have seen as to what weapon was used and in what manner Bhupal Singh was murdered. However, it is quite.

Clear that this witness has specifically deposed that Bhupal Singh was murdered by the appellants.

Coming to the last circumstance of the case which pertains to the recovery of the dead body of the deceased on the pointing out of the appellant Mohan Singh. The statement of Soor Singh (P.W.6), Jiwan Singh (P.W.8) and S.I. Kamrool Haq. (P.W.9) would be relevant. Kamrool Haq – S.I. (P.W.9) has deposed that the accused/appellant was arrested on 03.03.1987 and he immediately during interrogation replied that he would point out the place where the dead body of Bhupal Singh was found.

Likewise, Soor Singh (P.W.6) has also deposed that the Investigation Officer took them to the house of Mohan Singh and arrested him. After the arrest the appellant Mohan Singh, he said the police that he would point out the body of the deceased Bhupal Singh. Thereafter Mohan Singh took them to the place where the dead body of Bhupal Singh was found. This witness is an independent witness who had no enmity to the accused/appellant.

Statement of Jiwan Singh (P.W.8) shows that he is relative of the accused and there is every possibility that in order to help the accused/appellant, he has not given the true statement. But on the basis of the evidence of Soor Singh (P.W.6) and Kamrool Haq (P.W.9) , it is quite clear that the body of the deceased Bhupal Singh was recovered on the pointing out of the accused appellant Mohan Singh.

Learned counsel for the appellant has submitted that the recovery evidence cannot be relied upon on two counts, firstly, as per the statement of Soor Singh (P.W.6), appellant Mohan Singh was arrested from his house, secondly, according to the

Statement of Kamrool Haq (P.W.9). Mohan Singh was arrested near Koshi river.

It is correct that there is a contradiction in the testimony of these aforesaid two witnesses regarding place of arrest, but the testimony regarding the actual pointing out of the dead body by the appellant Mohan Singh is not under controversy and both the witnesses on this point corroborate each other.

On the basis of the assessment of evidence. We come to the conclusion that the prosecution has successfully established the guilt of the appellants beyond reasonable doubt. The evidence on record further shows that an amount of Rs. 3,000/- which was being carried by the deceased Bhupal Singh was also missing from the dead body. Hence, it is obvious that this amount must have been taken by the appellants because they are the persons who followed the deceased Bhupal Singh with the intention to recover the amount from his which he has won in gambling.

We do not find any illegality in the impugned order and judgment passed by the court below. We, therefore, uphold the conviction and sentence passed by the court below.

According the appeal is dismissed. The conviction and sentenced passed thereon by the court below against the appellant is maintained.

Thee record of the court below be returned immediately & learned C.J.M. concerned is directed to take appropriate steps in order to take the appellants into custody to serve out the sentence imposed against them by the trial court.

(B.C. Kandpal, J)

(M.M. Ghildiyal, J)

December 1, 2004:

ASWAL